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10/588,329

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Louis Robert Litwin

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EXAMINER

NGUYEN, STEVEN H D

ART UNIT

PAPER NUMBER

2473

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,329	Applicant(s) LITWIN ET AL.	
	Examiner Steven HD Nguyen	Art Unit 2473	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 1 objected to because of the following informalities:

As claim 1, line 3, "a first wireless access" should be changed to "the wireless access" because the claims do not contain second wireless access.

2. Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1, 3-9, 11-18 rejected under 35 U.S.C. 101 because The claimed invention as a whole must be useful and accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373-74 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to invention that possess a certain level of "real world" value, as opposed to subject matter that represent nothing more than an abstract idea or concept, or is simply a starting point for further investigation or research because the claimed invention is just providing the capability and saving the data. Therefore, it is just data manipulation (Brenner v. Manson, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96 (1966)); In reFisher, 992 F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993)).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 3-9 and 11-20 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

7. As claims 1 and 11, the specification does not disclose how a wireless channel can convey a unsaved character in hardware such as transportable medium in order to load them into server "providing the ability to **transport the savable character from the first gaming server onto a second gaming server**". If the memory does not have data how can it loads into the game.

8. Claims 1, 3-9, and 11-19 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the game servers are accessing via the different wireless access, does not reasonably provide enablement for accessing the first game server via wireless and another game server via wire-line. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to provide the ability to transport the savable character from the first gaming server onto **a second gaming server** the invention commensurate in scope with these claims. If the memory does not have data how can it loads into the game.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claims 1, 3-9 and 11-10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. As claim 1, line 3, "the game server" is vague and indefinite because it does not refer to any previous element.

12. As claim 1, lines 11-12 and claim 11, lines 13-14, "the savable character" is vague and indefinite because it is not clear it is the same as the selected savable character of the saving step or the other saved character above.

13. As claim 9, line 3, "a second game server" is vague and indefinite because it's not clear if it is refer to a second game server of the claim 1.

14. As claim 9, line 8, "the transport medium" is vague and indefinite because it does not refer to any previous element.

15. As claim 11, line 9, "the saved character" is vague and indefinite because it's not clear if it is referred to "a saved character" or the selected savable character".

16. As claim 20, "transportable from first gaming server to a second gaming server" is vague and indefinite because it's unclear what character is transported "stored savable character" or "the saved character".

17. Please clarify, so the meter and boundary of the claim can be determined.

Please use consistent term "the selected savable character" or "saved character".

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 1, 4-9, 11-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Tyler (USP 20070105624) view of Whitten (US 6716102) and Eguchi (US 6951516).

As claims 1, 7-9, 11-18 and 20, Tyler discloses a method for providing transportable character-centric gaming at a wireless access to a user comprising the steps of providing a first/second gaming server at a first/second wireless access (Fig 103), wherein the gaming server is accessible from the wireless access by requiring the user logon (Sec [24-25 of page 2 and 90 of page 7] wireless link between wireless device and access point which couples to 103). However, Tyler fails to fully disclose providing at least one first selectable game at said first gaming server having at least one savable character; providing the capability to select to save the savable character at an arbitrary point in the first game onto a transportable storage medium to retain a selected current saved character; the selected current saved character is loadable for play in a second game independent of said first game and saving the selected savable character onto the transport storage medium and providing the ability to transport the savable character from the first gaming server to second gaming server. In the same field of endeavor, Whitten discloses providing at least one first selectable game at said first gaming server having at least one savable character (Col 4:10-17, Col. 7:13-15, Col. 10-14); providing the capability to select to save the selected savable character at an arbitrary point in the first game onto a transportable storage medium to retain a selected current saved character (Col 4:10-17, Col. 7:13-15, Col. 10-14 discloses

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providing the characters for saving into memory during a game). However, Tyler and Whitten fail to disclose the selected current saved character is loadable for play in a second game independent of said first game and saving the selected savable character onto the transport storage medium and providing the ability to transport the savable character from the first gaming server to second gaming server. In the same field of endeavor, Eguchi discloses the selected saved character is loadable for play in a second game independent of said first game and saving the selected savable character onto the transport storage medium and providing the ability to transport the savable character from the first gaming server to second gaming server and discloses providing at least one selectable gaming environment on the first/second gaming server; and providing the ability to enter the saved character for play in the selected gaming environment and providing a second gaming server at a server-including the second game and at least one second gaming environment; providing the ability to access the second gaming server; providing the ability to select at least one of the second game or the second gaming environment on the second gaming server; providing the ability to load the saved character from the transportable medium onto the second gaming server; and providing the ability to load the saved character for play in the at least one selected second game or second gaming environment (Col. 3:8-12, 23-42 and 60-67 discloses a method and system for selecting a savable character from a server "first console" into a memory and using this memory to insert into another console to play another game with the selected saved character)

Since, a method and system for loading the saved data from server into another server is well known into art by using a transported device such as floppy disk, hard-drive and flash drive or memory stick. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for loading the current saved character for play in a second game independent of said first game and saving the selected savable character onto the transport storage medium and providing the ability to transport the savable character from the first gaming server to second gaming server as disclosed by Eguchi into the teaching of Whitten which discloses providing at least one first selectable game at said first gaming server having at least one savable character; providing the capability to select to save the savable character at an arbitrary point in the first game onto a transportable storage medium to retain a selected current saved character into the teaching of Tyler. The motivation would have been to provide a player with a high level of interest of the game.

As claim 4, Tyler discloses a second game is provided at a second game server wherein the first gaming server and the second gaming server are different (Fig 1, 103).

As claim 5, Tyler, Whitten and Eguchi fail to disclose the steps of determining if a previously saved character exists for the selectable game which is desired to be used, wherein if a previously saved character exists further comprising the steps of entering the previously saved character for use in the selectable game; and wherein if a previously saved character does not exist, further comprising the step of allowing play of the selectable game with a game-provided character. However, the examiner takes an official notice that a method for determining if a player would to start a new game based

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on default data or a continue game based on saved data are well known in the software developing art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply this method into the teaching of Tyler, Whitten and Eguchi. The motivation would have been to provide a user a plurality of choice to save a plurality of state information.

As claim 6, Tyler, Whitten and Eguchi fail to disclose determining if a previously saved character exists for the selectable game, wherein if a previously saved character exists for the selectable game, further comprising the steps of determining if the previously saved character is desired to be deleted and replaced with the current saved character, wherein if said previously saved character is desired to be deleted and replaced with the current saved character, further comprising the steps of determining the previously saved character to be deleted, replacing the deleted previously saved character with the current saved character; and wherein if said previously saved character is not desired to be deleted and replaced with the current saved character, further comprising the steps of allowing the current saved character to be saved and retaining the previously saved character; and wherein if a previously saved character for the selected game does not exist, further comprising the steps of allowing the current character to be saved. However, the examiner takes an official notice that a method for determining if a player want to save or not, if yes, then determine if file is already exist or not if yes then overwrite the old file with new file or save it with a new name file are well known in the software developing art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply

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this method into the teaching of Tyler, Whitten and Eguchi. The motivation would have been to provide a user a plurality of choice to save a plurality of state information.

As claims 12-15, Tyler discloses the step of providing a first gaming server and a first wireless local area network hotspot, wherein the first game is provided on the first gaming server at the first wireless local area network hotspot; providing a second game, a second gaming server and a second wireless local area network, where the second game is provided on the second gaming server at the second wireless local area network; providing at least one first gaming environment on the first gaming server, providing at least one second gaming environment on the second gaming server (Fig 1, 103 wherein each server has its own environment and belong to its access point).

As claim 19, Tyler, Whitten and Eguchi fail to disclose determining if a previously saved character exists which is desired to be used for the selectable game, wherein if a previously saved character exists which is desired to be used for the selectable game, further comprising the step of entering the previously saved character for use in the selected game, and wherein if a previously saved character which is desired to be used for the selectable game does not exist, further comprising the step of allowing play of the selectable game with a game-provided character. However, the examiner takes an official notice that a method for determining if the data does not exist, then apply a default value are well known in the software developing art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply this method into the teaching of Tyler, Whitten and Eguchi. The motivation would have been to prevent human error.

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20. Claim 3 rejected under 35 U.S.C. 103(a) as being unpatentable over Tyler, Whitten and Eguchi as applied to claim 1 above, and further in view of Giobbi.

Tyler, Whitten and Eguchi fail to disclose the claimed invention. In the same field of endeavor, Giobbi discloses the first and second games are different (Col. 9:5-21).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply the first and second games are different as disclosed by Gobbi into the teaching of Tyler, Whitten and Eguchi. The motivation would have been to provide with a high level of interest of the game.

Response to Arguments

21. Applicant's arguments filed 7/10/2009 have been fully considered but they are not persuasive.

22. In response to page 11, the applicant states that claim 10 is allowed because the examiner does not reject it under 103. In reply, the examiner rejected claims 9-10 with 112 first par. because these claim does not provide one of ordinary skill in the art to understand how to load a device into server. Furthermore, the applicant amended both claims 9-10 and its independent claim 1 and claims 9-10 are not depended on claims 11 and 20.

23. In response to page 12, the applicant states that the prior art does not disclose character as stated in the specification. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., car person robot etc..) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification,

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limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The applicant states that claim 10 is allowed because the examiner does not reject it under 103. In reply, the examiner rejected claims 9-10 with 112 first par because these claim does not provide one of ordinary skill in the art to understand how to load a device into server.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yao Kwang can be reached on (571) 272-3182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

10/14/2009

/Steven HD Nguyen/

Primary Examiner, Art Unit 2473